IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 541 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAGDISH DHARMAJI MARWADI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 541 of 1993
   MS SADHANA SAGAR for Petitioner No. 1
   NOTICE SERVED for Petitioner No. 1
   PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 04/02/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

1. The appellant- original accused in this appeal has challenged the judgment and order dated 24.3.1993 passed in Sessions Case No. 122 of 1992 by the learned Addl. City Sessions Judge, Ahmedabad, convicting the appellant for offence punishable under section 302 of IPC and sentencing him to suffer imprisonment for life. The appellant was acquitted for offence punishable under section 135(1) of the Bombay Police Act.

2. The appellant was charged for committing murder of Ganesh Panaji when he inflicted single knife blow in the stomach of the deceased. The incident in question took place on 27.12.1991 at about 19.00 hours near Liladhar Bhatt Hall, Behrampura, Ahmedabad.

3. The prosecution, in order to bring home the charge levelled against the appellant, has placed reliance on the evidence of two eye witnesses, Babubhai Marwadi, PW 2 Ex.15 and Kamal Babubhai Ex.20. Over and above the said witnesses, reliance is also placed on the evidence of complainant Shardaben Ex.14 who is the mother of the deceased.

4. Before we discuss the evidence of prosecution witnesses, we may state that the accused and prosecution witnesses are related to each other inasmuch as the accused is the nephew of PW 2 Babubhai. Similarly, the accused is also sister's son of the mother-in-law of complainant Shardaben. It is also not in dispute that the accused as well as the prosecution witnesses are residing in the chawl of Sakalchand Mukhi of Behrampura area of the City of Ahmedabad. As per the evidence of PW 2 Babubhai as well as PW 4 Kamal Babubhai, at about 5.00 p.m. on 27.11.191, a quarrel took place when the accused gave them abuses. On coming to know about the same, his sons Dipak, Jitu and Kamal also came there and Kamal gave a blow with hockey stick to Kanta, wife of the accused. Kanta filed complaint against PW 2 and PW 4 at about 6.50 p.m. at Kagdapith Police Station. At about 6.50 or 7.00 p.m., when PW 2 and PW 4 Jitu and deceased Ganesh were sitting near Liladhar Hall, the accused came there running with open knife. He gave knife blow on right portion of abdomen of the deceased and fled away. After receiving knife blow, while the deceased was running away to his house, PW 2 and PW 4 also followed him. As per the evidence of PW 1 Shardaben, mother of the deceased, on seeing the deceased in injured condition, and on making inquiry about the incident, the deceased informed him that accused had given him a knife blow. PW 1

pressed the wound with a cloth and took him to VS Hospital in a rickshaw taking his younger son Vasant with them. Duty Constable at the Hospital Saburbhai Gamirbhai, PW 10 Ex.39, after getting information from Dr. Premal Desai, conveyed the information about cognizable offence having taken place, to Kagdapith Police Station at about 20.05 hours vide Ex. 40. Kalusing Jaswantsing Jadeja, PW 8 Ex.30, PSO Kagdapith Police Station recorded the said information in 'Wordi' register vide Ex.31. PSI M.V.Mehta, PW 7 Ex.25 of Kagdapith Police Station, on the basis of the said information, reached VS Hospital. As the deceased was in unconscious condition, he recorded complaint of Shardaben, Ex.27 at 7.30 p.m. It is not in dispute that the deceased died in the hospital at 21.35 hours. PSI Mehta, after calling panchas, prepared inquest panchanama and made arrangement for sending the dead body for postmortem. The investigation was thereafter taken over by PW9 Ex.35 Sarjubhai Gohil, PI of Kagdapith Police Station who carried out usual investigation and submitted report against the accused.

5. The accused pleaded not guilty to the charge and claimed to be tried. In his further statement recorded under section 313 of the Code of Criminal Procedure, he has totally denied his involvement in the alleged offence. According to him, at the time of incident, he had gone to the hospital for giving treatment to his wife who had sustained head injuries when she was beaten by PW 4. According to him, no quarrel with the deceased had ever taken place.

6. Dr.Ravindra Krishna Bhise, PW 6 Ex.26 who performed the postmortem of the deceased noticed one stab injury in the right lower part of abdomen in iliac fossa, in mid clavicular line, 9 cm below and lateral to umbilicus 2 cm x 1 cm x cavity deep, downwards medially, lateral angle is acute, medial is semi lunar, lower edge is beveled over upper edge. Blood clots are present around the edges of the wound. He opined the cause of death to be shock and haemmorrhage as a result of the stab injury sustained. He also found the following internal injuries.

"Perineal cavity contains about 1.5 liters of blood and clots.

The external injury has cut the abdominal muscles and peritoneum. Then it has cut mesentery along with adjoining artery and veins through and through, 1.8 cm x 0.8 cm, the posterior end of the wound cannot be traced."

According to the doctor, the external injury no.1 was corresponding to internal injury which was sufficient in the ordinary course of nature to cause death. According to the doctor, the injuries are possible with muddamal knife. Dr. Ravindra has also deposed that the deceased sustained high polemic shock and there were all chances of survival provided immediate treatment was given. The doctor has also deposed that the injuries sustained by the deceased were of serious nature. On being inquired as to whether a person can sustain such injuries if he is walking slowly at the hands of somebody running with sharp edged weapon, he has replied in the affirmative. In view of the medical evidence on record, there cannot be any dispute that the deceased died a homicidal death.

7. After having minutely scrutinised the evidence of alleged eye witnesses PW 2 Babubhai and PW 4 Kamal Babubhai, we are of the opinion that their evidence does not appear to be natural and trustworthy. As per their evidence, wife of the accused was beaten by PW 4 Kamal Babubhai and for that, the wife of the applicant had in fact lodged a complaint against them. In that view of the matter, there was no reason for the accused to give knife blow to the deceased when the deceased was sitting in the company of PW 2 and PW 4. Instead of deceased, the accused could have caused injury to either PW 2 or PW 4.As per the say of these two eye witnesses, immediately after the incident, on coming to know that the complaint was filed against them, they had ran away to Rajasthan and they returned to Gujarat on 2.12.1991 when their statements were recorded. The manner in which they explained the delay would raise a doubt about their oral testimony especially when PW 1 Shardaben, in her evidence, has stated that both PW 2 and PW 4 had attended funeral of her son which had taken place on the next day. Thus, the evidence of PW 2 and PW 4 is not reliable and, therefore, we would not like to place reliance on their evidence. However, the evidence of PW 1 Shardaben, in our opinion, is quite natural and, therefore, acceptable. She, in a most natural way, has deposed before the Court that on being inquired about the incident, the deceased had given the name of the accused. The deceased was immediately removed to hospital and within 15 minutes of their entering the hospital, information regarding involvement of the accused was conveyed to the police station. The police, in the instant case, without wasting any time, filed complaint against the accused. There is no reason for PW 1 Shardaben to involve the accused in such a serious crime. No suggestion is put to

her in her evidence which may help prosecution. We are, therefore, clearly convinced beyond any manner of doubt regarding the involvement of the accused who is convicted for the murder of the deceased.

8. In view of the above, in our opinion, the learned trial judge was perfectly justified in holding that the accused has committed offence of committing murder of the deceased by inflicting knife blow in the abdomen of the deceased.

9. The next question that arises for our consideration is as to what offence the accused has committed. The learned trial judge has convicted the accused for offence punishable under section 302 of IPC. However, on close scrutiny of the evidence on record and the medical evidence, we are of the opinion that the accused cannot be convicted for offence punishable under section 302 of IPC and at the most, he can be convicted for offence punishable under section 304 Part II of the IPC. As stated above, the deceased sustained only one stab injury in the abdomen. Dr. Ravindra, in his evidence, has stated that the external injury corresponding to internal injury was sufficient in the ordinary course of nature to cause death of the deceased. Since the doctor has further opined that the deceased died due to high polemic shock i.e. due to loss of blood, the deceased could have survived provided he was removed immediately to the hospital. The aforesaid opinion of the doctor, in our opinion, will certainly attract clause (3) of section 300 IPC. In our opinion, the bodily injury sustained by the deceased at the hands of accused, though sufficient in the ordinary course of nature to cause death, the deceased could have survived if immediate treatment was given to him. The fact that the deceased was removed from Behrampura area to Civil Hospital especially when it has come in the evidence that there was a hospital in that area itself shows that the deceased could not get immediate treatment. Thus, the accused even if had an intention of causing bodily injury which was sufficient in the ordinary course of nature to cause death, in the instant case, clause (3) of Section 300 of IPC is clearly attracted. At the most, it can be held that the accused had knowledge when he used deadly weapon like knife and caused injury to the deceased.

10. The accused by this time has already undergone more than ten years of imprisonment and, therefore, the ends of justice would be met if we alter the sentence from imprisonment of life to the sentence already undergone for offence punishable under section 304 Part II of the IPC.

11. In the result, the appeal is partly allowed. The judgment and order of conviction and sentence passed against the appellant- accused by learned Addl. City Sessions Judge, Ahmedabad dated 24.3.1993 in Sessions Case No. 122 of 1992 is converted as under:

The appellant- accused is acquitted of the offence punishable under section 302 of IPC. However, we convict the appellant-accused for offence punishable under section 304 Part II of the IPC and sentence him to suffer imprisonment already undergone by him. It is ordered that the accused be set at liberty forthwith, if not required in any other case. Order accordingly.

(Kshitij R.Vyas,J.)

(Akshay H.Mehta,J.)

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